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OFFICE OF PETITIONS

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| In re Application of | : | |
| Vincent Chern | : | |
| Application No. 09/881,671 | : | |
| Filed: June 18, 2001 | : | DECISION ON TWO PETITIONS |
| Attorney Docket No.: 50310- | : | UNDER 37 C.F.R. §1.181 AND |
| 00671 | : | 1.137(B) |
| Title: VOICE ATTACHMENT TO AN | : | |
| EMAIL USING A WIRELESS | : | |
| COMMUNICATION DEVICE | : | |

This is a decision on the two petitions, concurrently filed November 18, 2006, pursuant to 37 C.F.R. §1.137(b)¹, to revive the above-identified application, and 1.181 to withdraw the holding of abandonment.

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R. §1.113 in a timely manner to the final Office action mailed December 13, 2005, which set a shortened statutory period for reply of three months. An after-

- 1 A grantable petition pursuant to 37 C.F.R. §1.137(b) must be accompanied by:
- (1) The reply required to the outstanding Office action or notice, unless previously filed;
 - (2) The petition fee as set forth in § 1.17(m);
 - (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
 - (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

final amendment was received on February 21, 2006, and an advisory action was mailed on March 17, 2006. No extensions of time under the provisions of 37 C.F.R. §1.136(a) were obtained, and no further response was received. Accordingly, the above-identified application became abandoned on March 14, 2006. A notice of abandonment was mailed on July 18, 2006.

The petition pursuant to 37 C.F.R. §1.181:

Petitioner's representative has requested that the Office "withdraw the Notice of Abandonment²."

37 C.F.R. § 1.181 (f) sets forth, *in pertinent part*:

Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

37 C.F.R. §1.181(f) indicates that any petition submitted under this portion of the C.F.R. that is not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely. The present petition was submitted almost four months after the mailing of the notice of abandonment.

As such, the petition under 37 C.F.R. §1.181 is **DISMISSED** as untimely.

It is noted in passing that even if this petition were to be accepted as timely filed, it could not be granted. Petitioner's representative has given no reason why the holding of abandonment was improper, and does not appear to have even alleged the same.

The petition pursuant to 37 C.F.R. §1.137(b):

37 C.F.R. §1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional. Since the statement contained in the instant petition varies from the language required by 37 C.F.R. §1.137(b)(3), the statement contained in the instant petition is being construed as the statement required by 37 C.F.R. §1.137(b)(3) and Petitioner's representative must notify the Office if this is not a correct interpretation of the statement contained in the instant petition.

² Petition, page 4.

With the present petition, Petitioner's representative has submitted the petition fee and a statement which is being construed as the proper statement of unintentional delay. Petitioner has further included a Request for Continued Examination (RCE) under 37 C.F.R. §1.114, and the associated fee.

No terminal disclaimer is required. The RCE has been accepted as the required reply under 37 C.F.R. §1.137(b)(1). The amendment of February 21, 2006 shall serve as the required submission.

As such, the petition under 37 C.F.R. §1.137(b) is **GRANTED**.

The Technology Center will be notified of this decision. The Technology Center's support staff will notify the Examiner of this decision, so that the RCE can be processed.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225³. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.



Paul Shanowski
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United States Patent and Trademark Office

³ Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. §1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.